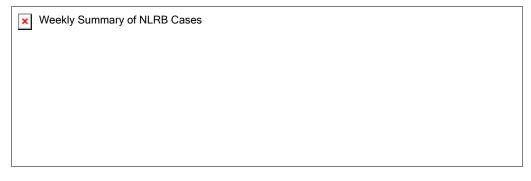
ABOUT THE WEEKLY SUMMARY

The Weekly Summary of NLRB cases, as the name implies, is a publication that summarizes each week all published NLRB decisions in unfair labor practice and representation election cases, except for summary judgment cases. It also lists all decisions of NLRB administrative law judges and direction of elections by NLRB regional directors. Links are established from the weekly summary index to the summaries and from the summaries to the full text of the decisions.



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West Virginia Steel Corporation, a wholly-owned subsidiary of Raleigh Mine & Industrial Supply, Inc. (9-CA-36690; 337 NLRB No. 3) Charleston and Poca, WV Dec. 20, 2001. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by engaging in surveillance of Bobby Bonnett, Jr.; by informing employees that they would not receive a pay raise because of their concerted and protected activities; by implying that employees should resign if they continued to engage in union activities; and by interrogating employee Frank A. Honaker. The Board also agreed with the judge that the Respondent violated Section 8(a)(3) and (1) by permanently laying off Bonnett because he supported

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the Union. [HTML] [PDF]

The judge dismissed similar allegations that the Respondent acted unlawfully by permanently laying off employees Honaker and Dallas L. Spurlock. The Board upheld the judge's finding with respect to Honaker, that he would have been laid off even in the absence of his protected conduct. However, it remanded to the judge the issue of Spurlock's layoff and to determine the extent of the Respondent's knowledge of Spurlock's union activities. The Board issued a final Order regarding the 8(a)(1) independent violations, the 8(a)(3) and (1) Bonnett layoff violation, and the dismissed Honaker allegations.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Steelworkers; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Charleston, July 22-23 and 29, 1999. Adm. Law Judge Benjamin Schlesinger issued his decision Nov. 3, 1999.

* * *

Masiongale Electrical-Mechanical, Inc. (25-CA-25119, et al.; 337 NLRB No. 4) Muncie, IN Dec. 20, 2001. In a Supplemental Decision and Order, the Board majority of Members Liebman and Walsh agreed with the administrative law judge that the Respondent unlawfully failed to hire and consider for hire 20 union "salt" applicants. The majority found "that the Respondent's professed reliance on certain hiring rules was a discredited, post hoc pretext for its real discriminatory motivation." [HTML] [PDF]

Dissenting Chairman Hurtgen would dismiss the Section 8(a)(3) allegations, maintaining "the General Counsel failed to overcome the Respondent's rebuttal showing that it did not consider or hire the 20 applicants because their applications were 'stale' or because of their high wage-rate history."

The majority emphasized that "[t]he Respondent's evidence still does not show even a single instance when it failed to hire an apparent nonunion applicant for any reason. Conversely, this evidence shows only that it failed to hire known union applicants." Chairman Hurtgen countered that the "Respondent cannot be faulted for failing to prove a negative. Respondent affirmatively showed that those whom it *did* hire did meet the criteria, and that the 20 alleged discriminates did not."

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Adm. Law Judge Bruce D. Rosenstein issued his supplemental decision Oct. 2, 2000.

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Route 22 Auto Sales d/b/a Route 22 Toyota and Route 22 Automobiles d/b/a Route 22 Honda (22-CA-23835; 337 NLRB No. 10) Hillside, NJ Dec. 20, 2001. Reversing the administrative law judge, the Board found that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from Amalgamated Local 747 during the term of the collective-bargaining agreement. The Respondent withdrew recognition from Local 747 in late August 1999, following an affiliation, merger, and disaffiliation involving the collective-bargaining representative of its unit employees. The Board stated: [HTML] [PDF]

In this case, the Respondent recognized and signed a contract with Local 747 in May 1999. That event was not attacked within 6 months by any charge. Accordingly, the recognition and contract cannot be assailed as unlawful. Moreover, once the Respondent and Local 747 entered into a collective-bargaining agreement on May 12, Local 747 enjoyed a conclusive presumption of majority status for the first 3 years of that contract. *Auciello Iron Works v. NLRB*, 517 U.S. 781, 786 (1996). The Respondent was not privileged to withdraw recognition from Local 747. *R.P.C. Inc.*, supra. [311 NLRB 232 (1993).] Thus, we agree with the General Counsel that the judge erred in finding that Local 148 presented a valid competing claim for representation that should be resolved by an election.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

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Charge filed by Amalgamated Local 747; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Newark on August 29, 2000. Adm. Law Judge Raymond P. Green issued his decision Nov. 24, 2000.

. . .

Grant Prideco, L.P. d/b/a Tubular Corporation of America (17-CA-20883; 337 NLRB No. 13) Muskogee, OK Dec. 20, 2001. The Board upheld the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by suspending and discharging employee Billy Knott because of his union and protected, concerted activities. It rejected the Respondent's contention that no evidence was established that it harbored union animus and that the judge erred in inferring an illegal motive. The Board stated: [HTML] [PDF]

Here, the judge found no direct evidence of union animus, but inferred an unlawful motive based on a variety of circumstances. These circumstances included the suspicious timing and disparate nature of Knott's discipline, the unprecedented scope of the Respondent's investigation of Knott, the absence of a cogent reason for conducting such an investigation, the failure to afford Knott any opportunity to answer the allegations raised by the investigation and, last, the fact that the Respondent's behavior was inconsistent with its progressive discipline system and its past practice.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Billy Knott, an Individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Muskogee, April 24-25, 2001. Adm. Law Judge Jane Vandeventer issued her decision June 15, 2001.

* * *

Dakota Fire Protection, Inc. (18-RC-16847; 337 NLRB No. 11) Grand Forks, ND Dec. 20, 2001. In the absence of exceptions, the Board adopted, pro forma, the hearing officer's recommendation to sustain the challenge to the ballot of Dennis Laturnus and to overrule the challenge to the ballot of Robert Thompson. The tally of ballots for the election held September 13, 2001 showed 8 for and 6 against the Petitioner (Road Sprinkler Fitters Union #669), with 3 challenged ballots. [HTML] [PDF]

The Petitioner challenged the ballot of Chris Mitzel, a recent high school graduate who worked for the Employer during the summer of 2001 before starting college on August 28, 2001. The Employer argued that Mitzel did not quit and has worked part time since the election. The Board agreed with the hearing officer that Mitzel terminated his employment on August 16, 2001, four weeks before the election and, therefore, was ineligible to vote. After the election, the Employer called Mitzel and asked him to come back to work. Mitzel testified that September 26 was the first day he had worked since August 16. An employee's actual status as of the eligibility date and the date of the election governs that employee's eligibility to vote, irrespective of what occurs after the election, the Board noted, in sustaining the challenge to Mitzel's ballot and issuing a certification of representative.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

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Niblock Excavating, Inc. (25-CA-26323, et al.; 337 NLRB No. 5) Bristol and Columbia City, IN Dec. 20, 2001. The Board adopted the administrative law judge's finding that the Respondent committed numerous violations of Section 8(a)(1), (2) and (3) of the Act by, among others, interrogating employees about their union support or activities; informing employees that they had been laid off, demoted, and denied a raise because of their union support or union activities; photographing or videotaping employees engaged in lawful picketing without proper justification; rendering assistance and support to the Christian Labor Association; promulgating, maintaining, or enforcing hiring policies for the purpose of discouraging union activities; and requiring employees to submit to drug testing because of their union support or union activities. It found merit in the General Counsel's exceptions to the judge's failure to find that the Respondent violated Section 8(a)(1) when it promised to increase its contribution to the employees' 401(k) plan in order to induce employees to abandon their support for the Union. [HTML]

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(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Operating Engineers Local 150; complaint alleged violation of Section 8(a)(1), (2), and (3). Hearing at South Bend, Jan. 22-26, 2001. Adm. Law Judge Arthur J. Amchan issued his decision May 15, 2001.

JPH Management, Inc. d/b/a Mid-Wilshire Health Care Center (31-CA-24055; 337 NLRB No. 7) Los Angeles, CA Dec. 20, 2001. The Board reversed the administrative law judge's dismissal of the complaint allegations that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union about the Respondent's decision to rescind unit employees' July 1999 wage increase. It upheld the judge's finding that the Respondent did not violate Section 8(a)(5) and (1) by refusing to sign the tentative successor collective-bargaining agreement reached by the parties on June 22, 1999. [HTML] [PDF]

The judge held that in light of the fact that no final agreement had been reached, the Respondent had mistakenly implemented the wage increase and was entitled to correct this mistaken implementation. Finding that by failing to notify and bargain with

the Union regarding the rescission of the wage increases, the judge noted the Respondent had, in fact, violated Section 8(a)(5). However, he determined that after the Union filed a grievance regarding the rescission, the Respondent entered into a course of fruitful discussions with the Union, demonstrating that the "Respondent clearly accepts the concept and obligation of collective bargaining." In light of the Respondent's postrescission behavior, the judge held that the unilateral change did not justify a remedial order. The Board disagreed, stating that the unilateral rescission of the wage increase justifies the issuance of a cease and desist order because during contract negotiations, an employer may not make unilateral changes to represented employees' terms and conditions of employment without bargaining to an impasse.

certain aspects of the Respondent's conduct that, had they been squarely challenged, might have presented a different case. . . . A closer case would have been presented, however, were the issue whether the Respondent had breached its duty to bargain in good faith by appointing negotiators without the authority to carry on meaningful bargaining, including the authority to reach a final agreement."

Member Liebman concurred with the Board's decision. In her separate opinion she said "I write separately only to highlight

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Service Employees Local 399; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Los Angeles, Feb. 12-14, 2001. Adm. Law Judge Lana H. Parke issued her decision April 9, 2001.

Horizon House Developmental Services, Inc. (4-CA-29830; 337 NLRB No. 9) Philadelphia, PA Dec. 19, 2001. The Board, reversing the administrative law judge's dismissal of the complaint allegations, held that the Respondent violated Section 8(a) (1) and (5) of the Act by withdrawing recognition from the Union on October 2, 2000, failing to furnish necessary and relevant information requested by the Union on August 14 and 30, 2000, and refusing to process grievances filed by the Union on behalf of unit employees on August 30, 2000. It decided that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the allegations in this case. [HTML] [PDF]

In dismissing the complaint, the judge relied on his findings that (1) Home Coordinator Barbara Rossi testified that employees Morrison, DiYenno, and Moore had apprised her that the Union was not necessary and that it was unfair to be required to pay dues and not receive representation; (2) Home Coordinator Erica Mount testified that employees Thompson and Garglahn had complained to her about paying dues and not being represented by the Union; and (3) employee Thompson, the former union delegate, had told several members of management "that the employees no longer wanted the Union to represent them" and that they were circulating a petition to that effect.

Having thus concluded that the Respondent was privileged to withdraw recognition from the Union, the judge determined that the Respondent did not violate the Act by refusing to provide information requested by the Union and by refusing to process

the class-action grievances filed by the Union. The judge reasoned that the Union's admitted failure to respond to the Respondent's letter requesting additional information regarding the details of the alleged contract violations-together with the Union's failure to exercise its option to elevate the grievances to the next step of the grievance procedure-precluded a finding that the Respondent refused to process the grievances.

Applying the "good faith uncertainty" standard articulated in *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359 (1998) and explicated in subsequent Board decisions, the Board concluded, contrary to the judge, that the Respondent did not demonstrate that it possessed a good-faith uncertainty regarding the Union's majority status. It agreed with the contentions of the General Counsel and the Union that the judge inaccurately characterized some of the testimony on which he relied in finding a good-faith uncertainty. Finding that only two of the approximately 22 unit employees statements could contribute toward a good-faith uncertainty of the Union's status, the Board held this limited evidence was insufficient to establish a good-faith uncertainty of the Union's majority status under *Allentown Mack*.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Hospital and Health Care Employees District 1199C; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Philadelphia on May 9, 2001. Adm. Law Judge Bruce D. Rosenstein issued his decision June 27, 2001.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Postal Workers Local 735 (an Individual) Wichita, KS December 7, 2001. 17-CB-5544P, 5517P; JD(SF)-97-01, Judge James L. Rose.

ATC/Vancom of California, L.P. (Teamsters Local 572) Santa Clara, CA December 14, 2001. 31-CA-24875, 25022 and 31-RD-1434; JD(SF)-101-01, Judge James M. Kennedy.

Lackawanna Electrical Construction, Inc. (Electrical Workers [IBEW] Local 81) Taylor, PA December 21, 2001. 4-CA-29391, 29877; JD-160-01, Judge George Alemán.

Roosevelt Paper Company (Teamsters Local 100) Richwood, KY December 27, 2001. 9-CA-38246, 38319; JD-166-01, Judge Irwin H. Socoloff.

Contract Flooring Systems, Inc. (Painters Local 16) Bay Point, CA December 26, 2001. 32-CA-18602; JD(SF)-103-01, Judge Mary Miller Cracraft.

Macerich Management Company (Carpenters Locals 586 and 505) Sacramento and Capitola, CA December 26, 2001. 20-CA-29636-1, 29918-1; JD(SF)-105-01, Judge Jay R. Pollack.